1945

File No. cattle
Trespass II/45
Legal Department.
B **BRANCH**

Subject:—

Rules and Notifications

under the Bombay Cattle

Trespass Act of 1871

1945 E

File No. cattle Trespass II/45.

Gen. 194 e.

439-B

Office of the R.L.A.

A revised draft notification is [redacted] sent herewith.

2. It is presumed that the powers under section 12 of the Cattle Trespass Act have not been delegated to the Kirkee Cantonment under section 31 thereof. The word 'etc' used in the schedule does not convey any idea as to what other cattle are meant and has been deleted. If there are other cattle they may be s-pecified by name.

Id/-
30/7/45.

U.R. to R.D. No. 5703, dated the
1st August, 1945.

MSR.
12/7.

UR-
1617
K.S.R.
1617

Notification.

Revenue Department.

Bombay Castle,

July 1945.

Cattle Trespass Act, 1871.

No.10071/24.- In exercise of the powers conferred by section 12 of the Cattle Trespass Act, 1871 (I of 1871), and in supersession of Government Notification in the Revenue Department, No. 2192-B, dated the 29th March 1924, in so far as it applies to the limits of the Kirkee Cantonment, the Government of Bombay is pleased with effect from .....1945 to prescribe the scale of fines respectively specified against them in respect of the cattle of the kinds specified below impounded under the said Act within the limits of the Kirkee Cantonment.

Cattle	Fine per head. Rs. as. ps.
Buffalo	2- 0- 0
Cow, horse, mare, pony, bull bullock, mule and heifer.	1- 0- 0
Calf or donkey.	0- 8- 0
Sheep or goat.	0- 4- 0

By order of the Governor of Bombay,

Secretary to Government.

MSR.
12/7.

Office of the R.L.A.

R.D. has stated that powers under section 12 of the Cattle Trespass Act have been delegated to all cantonment authorities and other local bodies (other than District Local Boards). By virtue of such delegation, the Kirkee Cantonment Authority would be competent to issue a notification under section 12 of the Act in terms of the draft at page 27 ante unless the delegation has in the meantime been cancelled by Government. If the Cantonment Authority is to issue the notification, for the words "the Government of Bombay is pleased" the words "the Kirkee Cantonment Authority prescribes" should be substituted, and the words 'to prescribe' should be deleted.

Id/- P.N.M.
5/10/45.
Remembrancer of Legal Affairs.

U.R. to R.D., No. 7390, dated the
6th October 1945.

MSR.
12/7.

Office of the R.L.A.

Point (1): In the draft Circular at pages 53-55 ante no mention is made of cantonments on the assumption that the Provincial Government has no control over them from 1st April 1937. This assumption leads to the question as to whether the executive authority of the Provincial Government extends to cattle pounds managed by Cantonment Boards since after 1st April 1937.

The subject of "pounds and the prevention of cattle trespass" falls in the Provincial Legislative List in the Seventh Schedule to the Government of India Act, 1935, (entry 20 in the List). Under section 100(3) of the Act the Provincial Legislature has subject to the two preceding sub-sections of that section and the Federal Legislature has not, power to make laws for the Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List. Under section 49 of the Act the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws. In virtue of these provisions the Provincial Government will have control over cattle-pounds established in the Province irrespective of the fact that the local authority put by the Province in management of them is under the control of the Central Government. It is on this principle that the Government of India (Adaption of Indian Laws) order, 1937, has proceeded while adapting the Cattle trespass Act, 1871.

The Adaptation Order has retained the powers under the Act with the Provincial Government in respect of all local authorities and no exception has been made in the case of Cantonment Boards. It is true that in view of entry 2 in the Federal Legislative List, namely, "Local self-government in cantonment areas" it will be within the competence of the Federal Legislative to provide for matters relating to pounds and the prevention of cattle trespass, which, though otherwise within the legislative competence of the Provincial Legislature, may be considered as necessarily incidental to effective legislation upon the subject of local self-government in cantonment areas. But the field of such Federal Legislation would be clear of the Cattle Trespass Act and the pounds established under that Act by the Province. In other words the pounds and pound-keepers under a provisions in the Cantonments Act will be distinct from the pound and pound-keepers under the Cattle-Trespass Act and both will stand uncurtailed mutually until there is actual over-lapping of particular legal provisions. (See Attorney General for Canada Vs. Attorney General for British Columbia 1930 A.C. 111 at p. 118). The Cantonments Act of 1924, does not contain any provisions regulating cattle pounds nor does it appear that there is any other law passed by the Central Legislature on the subject of cantonments which provides for matters relating to pounds. In the result the Provincial Government can as matters stand at present exercise control over Cantonment Boards in so far as cattle

pounds established under the Cattle-Trespass Act are concerned.

Point (2): It is true as stated by Secretary, R.D. that under sections 7 and 12 of the Cattle-Trespass Act powers are exercised by the Provincial Government and not by the District Magistrates. As regards the exercise of the powers of the Provincial Government under section 7 by the local authorities, they cannot be exercised by them unless they are transferred to them under section 31 of the Act. It may be pointed out in this connection that in no case can the local authorities perform the function of keeping registers, for that function has been asigned under section 7 to a pound-keeper and cannot as such be transferred to a local authority under section 31. The statement in clause (3) of para. 2 of the draft circular that the local authorities may keep the the prescribed register is not therefore correct.

Point (3): It is for the R.D. to verify whether powers under section 4 of the Act have been delegated to all local bodies or not.

Point (4): The draft notification under section 6 sent to the R.L.A. on the linked file is being scrutinized and will be sent shortly to the R.D.

2. The draft notification at page 37 ante as slightly revised is in order. The draft notification proposes to transfer the functions of the District Magistrate under section 17 of the Act. The function which the District Magistrate

performs under this section is to hold the surplus unclaimed proceeds of the sale ân deposit for 3 months and thereafter as part of the revenues of the Province. As pointed out in R.L.A.'s opinion No. 544 dated the 21st January 1941 no useful purpose will be served by transferring this function of the District Magistrate to the village panchayats or for the matter of that to any local body. The R.D. should therefore consider whether the reference to section 17 should not be omitted from the draft notification.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5203 dated the 25th June 1942.

MSR.